

House State Administration Committee, January 10, 2007

Testimony in Opposition to HB 97 by: Dal Smilie, Chief Legal Counsel, Department of Administration; 444-3310

HB 97 requires a 60 day automatic hold on rulemaking so that the new Office for Review of Administrative Rules can review a pre-notice draft of all administrative rule changes.

This 60 day hold is to allow adequate review of rulemaking. Currently each rule must be reviewed by an official "rule reviewer" who are administrative law experts, often attorneys. The Secretary of State reviews each filing for compliance with the law. The Legislative Services Division has legal counsel review each rule filing. Those legal counsel contact agencies when they find problems with rule making and then report to the appropriate interim oversight committees.

This 60 day delay in rulemaking will delay the provision of rights and entitlements passed by the legislature to citizens and businesses.

For instance, statutory changes to better support independent contractors required rulemaking. If HB 97 were in effect implementation would have been delayed 60 days.

SB 108 allows better management of Workman's Comp injuries; it will save employers money and get workers back on the job. It requires rules to implement and a 60 day delay in rulemaking delays these benefits.

The Big Sky Economic Trust Fund was created last session and required rules before it could start. An automatic 60 day hold would delay necessary economic development.

The Department of Commerce releases federal funds for economic development to local government and small businesses. Annually federal guidelines are updated and have to be incorporated by reference by administrative rules. The automatic 60 day hold on rulemaking would delay the granting of these federal economic development funds.

Citizens and businesses may have rights granted by the legislature that cannot be timely given, causing hardship and litigation.

This 60 day delay will cause budget problems. For instance welfare rates set in rule cannot be reduced timely. Sec. 2-4-303(1) (b), MCA does not allow rate reduction in

emergency rules. Rules can be necessary to limit eligibility, cut rates and close loopholes.

The additional review time afforded by HB 97 is not necessary. The Legislature and its staff already have considerable review power over rulemaking. Legislative Services Division legal counsel now review all rule notices and report their findings to rulemaking agencies and interim committees tasked with rule review. For instance the Legislature can:

- Repeal a rule (2-4-412(1))

- Demand changes to a rule (2-4-412(2))

- Change the law giving rulemaking authority to an agency

- By committee, review rules and intervene in rulemaking or litigation concerning rulemaking (2-4-402(2) (d))

- Poll the Legislature which demonstrates legislative intent (2-4-403 & 404)

- Legislative committees may object to rules and agencies must respond in writing, objections must be published in the MAR (2-4-406)